

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

**§ 18944. Gifts to Members of an Official's or Candidate's Family.**

(a) Scope of Regulation. This regulation applies when determining whether a gift to a public official's or candidate's family member also constitutes a gift to the public official or candidate for purposes of the Act.

(b) Definitions. For purposes of this regulation, the following definitions apply:

(1) "Official" means a public official as defined in Section 82048 or a candidate as defined in Section 82007.

(2) "Official's family" or "family member" includes any of the following individuals:

(A) An official's spouse.

(B) A "dependent child" of the official as defined in Regulation 18229.1.

(C) An official's child (including an adoptive child or stepchild) who meets all of the following criteria:

(i) Is at least 18 but no more than 23 years old and is a full-time or part-time student.

(ii) Has the same principal place of residence as the official. For purposes of this provision, a place, located away from the official's residence, at which the child resides for the purpose of attending school is not the child's "principal place of residence."

(iii) Does not provide over one-half of his or her own support.

(c) A single gift given to both an official and one or more members of the official's family is a gift to the official for the full value of the gift.

(d) The following applies to a gift given solely to a member of an official's family.

(1) A gift given solely to a member of an official's family is a gift to the official when the gift confers a clear personal benefit on the official. A gift to an official's family member confers a clear personal benefit on the official in any of the following circumstances:

(A) It is reasonably foreseeable at the time the gift is made that the official will enjoy a financial benefit from the gift. A "financial benefit" from a gift includes, but is not limited to, a payment, other than occasional meals, lodging, or local transportation, to fulfill a commitment, obligation, or expense of the type normally paid by a family for the ordinary care and support of one of its members.

(B) It is reasonably foreseeable at the time the gift is made that the official will use the gift, except for a minimal use.

(C) The official exercises discretion and control over who will use or dispose of the gift. Exercising "discretion and control" includes, but is not limited to, when an official, or his or her agent, requests a gift for, or to be used by, the official's family member.

(2) A gift given solely to a member of an official's family and not covered under subdivision (1) is a gift to the official if the gift confers a presumed personal benefit on the official. A gift to an official's family member confers a presumed personal benefit on the official in any of the following circumstances:

(A) The gift is made to a family member of a state agency official who is subject to Section 87200 by a donor who is a lobbyist, lobbying firm, lobbyist employer, or other person required to file reports under Chapter 6 (commencing with Section 86100) of the Act.

(B) The gift is made to a family member of a local government agency official who is subject to Section 87200 by a donor who is or has been directly involved in a governmental

decision, as defined in Regulation 18704.1(a), in which the official will foreseeably participate or has participated in the prior 12-month period.

(3) Exceptions

(A) There is no gift to an official under paragraph (1) if both of the following circumstances apply:

(i) The official can show there is an established working, social, or similar relationship between the donor and the official's family member independent of the relationship between the donor and the official.

(ii) The person who made the gift is not a donor identified in paragraphs (2)(A) or (2)(B).

(B) The official can rebut the presumption in paragraph (2) if he or she can show there is an established working, social, or similar relationship between the donor and the official's family member independent of the relationship between the donor and the official.

(e) This regulation does not apply to the type of gift that, under the Act or other Commission regulations, would not be considered a gift if given directly to the official.

Note: Authority cited: Section 83112, Government Code. Reference: Section 82028, Government Code.

## HISTORY

1. Renumbering of former section 18726.2 to section 18944 filed 1-26-94; operative 1-26-94 pursuant to Government Code section 11346.2(d) (Register 94, No. 4).

2. Change without regulatory effect relocating section filed 11-17-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).

3. Amendment of section heading and section filed 7-24-2006; operative 8-23-2006. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3

Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2006, No. 30).

4. Repealer and new section filed 1-11-2010; operative 2-10-2010. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2010, No. 3).